IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.MC.No. 2955 of 2007()

CC.751/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: ACCUSED

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1. GRACY CHERIAN , AGED 74 YEARS,
MAMOOTTIL VEEDU,CHANDANAPPALLY P.O.,
PATHANAMTHITTA DISTRICT NOW RESIDING AT
MYNAGAM,T.V.STATION ROAD,
KUDAPPANAKKUNNU P.O.,THIRUVANANATHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. AJITH THOMAS,
THOPPIL KALATHIL, KALPAKA BUILDINGS,
KARUVATTA MURI, ADOOR.

2. STATE OF KERALA REPRESENTED BY THESTATE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2955 of 2007

Dated this the 25th day of September, 2007

ORDER

The petitioner, a woman, allegedly aged about 74 and allegedly bedridden on account of geriatric ailments has come before this Court complaining about the issue of non bailable warrant against her by the learned Magistrate in a prosecution under Section 138 of the Negotiable Instruments Act. The learned counsel for the petitioner submits that the petitioner had appeared through counsel before the learned Magistrate on two occasions and had applied for exemption. The latter request was rejected by the learned Magistrate and a non bailable warrant has been issued against the petitioner.

2. Did the petitioner apply for exemption from personal appearance under Section 205 Cr.P.C ? Admittedly, the petitioner has not applied for such exemption. When the accused is a woman, aged 74 years and afflicted with geriatric ailments, I am certain that the proper course for her was to apply for exemption from personal appearance under Section 205 Cr.P.C. I find no reason as to why the petitioner did not make such application.

3. In the peculiar facts and circumstances of the case, I am satisfied that the request of the petitioner for a direction not to

execute the non bailable warrants issued against the petitioner, who is afflicted with geriatric ailments, can be allowed. The petitioner can be granted permission to apply for exemption under Section 205 Cr.P.C. The learned Magistrate must consider such application for exemption on merits, in accordance with law and expeditiously. The mere fact that a non bailable warrant is pending against the petitioner need not deter the learned Magistrate from considering the application for exemption. Such application can certainly be considered even when a non bailable warrant has been issued against the indictee. It is by now trite that the plea of the accused can be recorded by the learned Magistrate through counsel for the indictee when personal appearance is exempted under Section 205 Cr.P.C. It is also specifically stipulated in the Code that at the stage of Section 313 Cr.P.C, the examination can be dispensed with when the case is a summons case and personal appearance of the accused has been exempted by the learned Magistrate. I cannot, in these circumstances, find any stipulations in the Code standing in the way of the learned Magistrate proceeding with the trial without insisting on the personal appearance of the petitioner.

4. In the result, this Crl.M.C is allowed. The following directions are issued.

i) The non bailable warrant issued against the petitioner shall not be executed till 15.10.07.

ii) The petitioner shall in the meantime appear before the learned Magistrate through her counsel and apply for exemption from personal appearance. The learned Magistrate shall consider such application and pass appropriate order-on the date of surrender itself.

iii) Compliance shall be reported to this Court."

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-